IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

WRIT PETITION NO.832 OF 2004

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Pheonix Mills Ltd. ...Petitioner

v/s.

Keshav Mahadev Savakhande & Anr....Respondents

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Mr.K.S.Bapat for the Petitioner.

None for the Respondents.

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CORAM: D.K.DESHMUKH, J.

DATED: 7TH AUGUST, 2006

P.C.:

1. By this petition, the Petitioner challenges the order passed by the appellate authority under the Payment of Gratuity Act, 1979 and the Deputy Commissioner of Labour, Mumbai dated 11-12-2003. By

that order the appellate authority has set aside the order dated 22-11-2002 passed by the Controlling Authority and has directed the petitioner to pay the balance amount of gratuity i.e. Rs. 47,552/- to the Respondent.

2. The relevant facts are that the Respondent filed an application before the Controlling Authority under Section 7 of the Payment of Gratuity Act. It was his contention that he was working from 1954 in the same Department and he retired in December, 1996. He has submitted that the petitioner company has paid him an amount of Rs. 35900/- towards gratuity. According to him he is entitled to the payment of gratuity to the extent of Rs. 91,590/-. According to him, by letter dated 29-9-1997, he demanded the balance amount of gratuity.

3. This application was opposed by the Petitioner. It was not in dispute that the respondent is not working and he has retired in the year 1996. It was contended by the petitioner that the Respondent proceeded on illegal strike from 18-01-1982 and strike was declared illegal by the Industrial Court. As a result, the Respondent’s services came to be terminated w. e. f. 09-08-1982. The trade Union raised a dispute because of that. Reference was made

to the Industrial court. While that reference was pending before the Industrial Court, a settlement was reached between the petitioner- company and Respondent dated 21-02-1990. While that reference was pending, the respondent was re-employeed by the Petitioner w. e. f. 19-03-1985. The settlement was reached between the petitioner and respondent dated 21-2-1990 whereby the respondent accepted that his appointment w. e. f. 19-02-1985 is a fresh appointment. He also accepted that in so far as his services till the year 1982 is concerned, he is entitled only to the payment of gratuity and leave wages. That amount was also quantified at Rs. 9677/- and the petitioner agreed to pay that amount to him by a particular date. It is common ground that the amount of gratuity and leave wages which is mentioned in the settlement dated 21-02-1990 was paid to him. The petitioner company, therefore, submitted that service of the Respondent was broken in 1982. The amount of the gratuity to which he was entitled for his service up to the year 1982 has been paid to him. Similarly, whatever amount of gratuity to which he was entitled to for his services from 1985 till the date of his retirement i.e. till 1996, has been paid. It was contended that because of the settlement, the Respondent can not claim continuity in service.

4. The Controlling Authority decided the application filed by Respondent by its order dated 22-11-1992 and held that because of the settlement between the parties, the application is not maintainable and the Respondent is not entitled to claim the amount.

5. Feeling aggrieved by that order an appeal was filed by the Respondent before the appellate authority. The appellate authority by the order impugned has reversed the order passed by the controlling authority and has directed the petitioner to pay the aforesaid amount as a gratuity to the Respondent. The net result is that the settlement between the parties is given a clear go by.

6. The Learned Counsel appearing for the petitioner submits that Respondent was examined before the Controlling Authority. In his examination he accepted that he had entered into the settlement dated 21-02-1990. According to the learned counsel, the settlement dated 21-02-1990 clearly shows that the Respondent accepted the termination of his services in 1982 and accepted the appointment from 19-02-1985 as a fresh appointment. If that is so, unless the appellate authority records a findings that the settlement dated 21-02-1990 is bogus and

sham or non-existent in the eye of law, the appellate authority could not have made the order.

7. I have perused the record. Perusal of the settlement dated 21-02-1990 shows that the Respondent clearly accepted that his services were terminated in 1982 and that in that regard except for the amount of the gratuity and the leave wages nothing is receivable by him. Thus, except the amount of Rs. 11906.77,the Respondent gave up al his claim in relation to his services which came to an end in the year 1982. By that settlement, he also accepted that he has been given a fresh appointment by the petitioner from 1985. In the face of this clear settlement, unless firstly, the appellate authority has the power to set aside or ignore the settlement which is reached between the parties and if the authority has the power, then the authority for the reasons to be recorded by that authority holds that the settlement is non-existent in the eye of law because it is vitiated by fraud or undue influence etc., it is impossible for the appellate authority to make the order. In my opinion, the order of the appellant authority impugned in the petition suffers from non application of the mind to the most crucial aspect of the matter.

8. In the result,therefore, the petition succeeds and is allowed. Rule made absolute in terms of prayer clause (a). No order as to the costs.

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